[Not reported]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 658 OF 2000.

Ravikant Shankarappa Patil]
Resident of 46, Railway Lines,] Appellant.
Solapur.](Org.Accd.No.1)

versus

State of Maharashtra : Respondent.

WITH

CRIMINAL APPEAL NO.644 OF 2000

1. Amar Jayant Salunke]
age 20 years, resident of 42]
New Tirhegaon,Forest,Solapur]
2. Iranna Anappa Dangapur,]
Age 21 years, resident of]
Deotangi, Taluka Aland,]
Dist.Gulbarga Karnataka State] Appellants.
3. Ramesh Arjun Koli, Age 21] (Original
years, resident of Block] Accused
No.12, Vikas Nagar, Solapur] Nos. 2 to 5)
4. Shivkumar @ Shafya Bhima-]
shankar Waghmare, Age 21]
years, resident of Harlayya]
Nagar, Vijapur Road, Solapur]

versus

The State of Maharashtra.] Rspondent

Mr.A.P.Mundergi with Mr.V.B.Naik for the appellants.
Mr.D.R.More, APP, for the State.
Mr.V.V.Purvant for the original complainant.

CORAM : D.G.DESHPANDE,J.

DATED : 10th September 2004.

JUDGMENT

1. Appeal No.658 of 2000 is filed by original accused No.1 and other Appeal No.644 of 2000 is filed by original accused Nos. 2 to 5. Both the appeal were argued on behalf of all the accused by Mr.Mundergi and replied by Mr.More, the learned APP with Mr.V.V.Purvant, the advocate for the original complainant.

2. Both these appeals have been filed by the original accused Nos. 1 to 5 against their conviction under Sections 148, 452 r/w 149; 366 r/w 149; 342 r/w 149; 323 r/w 149 and 506(2) r/w 149. The accused have been awarded different sentences on each count by the VI

Addl.Sessions Judge, Solapur (S.S.Choudhari) by his judgment dated 28.7.2000.

3. Miss Fatima Sabin Nazir Ahmad Shaikh is the prosecutrix in this case. She was having brilliant education record. She was studying in III year Computer Engineering at Walchand Institute of Technology at solapur. She was residing there with her father, mother and brother, who was getting education at Pune. Many other relatives were also residing at Solapur. Her father was the professor. He was in Libia for some time. He returned to India in 1991 and started staying at plot No.56, at Sahara Nagar, Solapur with his family members.

4. Accused No.1 contested Loksabha election in the year 1996 from Solapur constituency. He was knowing parents of the prosecutrix. From this campaign, he enquired about their coming back to India. He was also friend of one Ibrahim Abu Bakar Shaikh who was the maternal uncle of the prosecutrix. It appears that from that campaign, the old friendship with the father and family of the prosecutrix was revived and renewed.

5. In November 1997 the father of the prosecutrix decided to construct a house at 38, Jule Solapur. Accordingly the work was entrusted to one Jakkal contractor for Rs.9,50,000/-. The father of the prosecutrix paid Rs.8,30,000/- to Jakkal. However, Jakkal left the work incomplete and did not turn back. The father of prosecutrix, therefore, contacted accused No.1, who assured that the amount paid to Jakkal would be recovered. In the mean time intimacy was developing between accused No.1 and the family of the prosecutrix. The accused was allegedly complaining about his wife and he wanted Nazir Ahmad to intervene. Accused No.1 had also asked hand of the prosecutrix in marriage. The father Nazir Ahmad got annoyed and asked accused No.1 not to visit their house again. However, after one month accused No.1 went to them and told them that there was danger to his life and he would stay there. He was carrying revolver and used to put his revolver on table and remove bullets from it. Therefore, the prosecutrix and her father directly came

under the control of accused No.1.

6. Father Nazir Ahmad shifted to new residence three days prior to Ramjan Id which was celebrated on 20.1.99. the accused came there and questioned them about their right to occupy the house and also asked for Rs.12,00,000/- which he had spent for the construction of the house. Nazir Ahmad paid Rs.4 lakhs. Remaining amount was to be paid by him within 2/3 days.

7. In the last week of April 1999 accused No.1 went to the house of prosecutrix at 1-30 p.m. and asked her mother either to pay Rs.8 lakhs or to perform Nikah of prosecutrix with him. The prosecutrix protested against his proposal. Accused No.1 threatened her. He made a phone call from her residence and called some persons. The mother of the prosecutrix called her husband from Tubba Hotel Solapur which was very near to the residential house. The father of the prosecutrix reached home immediately. Other accused were already there with accused

No.1. At that time accused No.1 was having revolver. The prosecutrix, out of frightened, shut herself in bath room. However, accused Nos. 1 and accused Nos. 2 to 5 broke open the door of the house. Accused No.1 caught hold her and at the point of revolver he brought her outside and asked her to sit in his car. The car was taken towards Pune. The prosecutrix firmly told accused No.1 that she would not marry with him. But accused No.1 threatened her that if she did not marry with him, he would kill her brother Altaf at Pune. He also given fist blows to her. The prosecutrix threatened him that if she was tortured, she would jump down from the car. Accused No,.1 brought her back to her house and left her there.

8. At that time the parents of the prosecutrix were not at home. She went by scooter to the house of her maternal aunt Shahida Begum at Ashiyana Nagar. Her parents were there. She stayed there for 4/5 days. Maternal uncle Ibrahim Shaikh and one Javed approached accused No.1 and tried to convince him to drop the idea of marriage with the prosecutrix. But the accused insisted.

9. On 4.5.1999 Ibrahim Shaikh and Javed again went to the house of accused No.1 and after they returned, they told that accused No.1 was firm to get marry with the prosecutrix. He had also threatened them to hand him over the custody of the prosecutrix within an hour or else she should forget her maternal uncle. Hence the prosecutrix and her parents went to the house of Smt.Shahida Begum. Accused No.1 went there by car. He was having revolver. Accused asked them to take two persons with them and sit in the car or else he would kill them. Everyone got afraid. Therefore, the prosecutrix, her brother Altaf, maternal uncle Javed and his wife sat in the car. Accused No.1 himself drove the car and brought them to Mumbai where they reached at 4 p.m. on 5.5.1999. Then all of them were taken by accused No.1 to the house of Shakil Noorani at Oshiwara, Mumbai, who is allegedly the friend of accused No.1. Accused No.1 had asked the parents of the prosecutrix to come to the residence of Shakil Noorani in Mumbai. The parents of the prosecutrix reached Bombay by train at 11.30 p.m. on the next day. Marriage was arranged.

Accused No.1 purchased clothes and golden ornaments on that day against the wishes of the prosecutrix and, on 6.5.1999, in the morning, accused No.1 asked the prosecutrix to get herself prepared for Nikah after giving threats. He told the prosecutrix that he was converted to Muslim religion and his name was changed. He also showed her affidavit. Thereafter accused No.1 took the prosecutrix, her father, brother and his friend Shakil Noorani at Ashirwad Wiwah Sanstha, Bandra (E), Mumbai. Registered marriage was performed under the threat to the prosecutrix. Then against the wish of the prosecutrix she was taken to Khandala for honeymoon. They stayed there in Dukes Retrit and accused No.1 expressed his desire to have sexual intercourse with her. But she did not allow.

10. Thereafter the prosecutrix left Mumbai with her brother Altaf and returned to Solapure on 9.5.1999. She stayed with her parents. The accused also came there and stayed with her parents and, under the threat of revolver he committed sexual intercourse with her from 9.5.1999 to 17.5.1999. Then on 17.5.1999 he

took her to Hyderabad. They stayed there at Hotel Ramda. He showed some flats to her and asked her to bring a sum of Rs.20,00,000/- from her parents. Forcibly he had committed sexual intercourse with her for three days at that hotel. Then they came back to Solapur. This state of affairs continued up to 4.6.1999. Ultimately the prosecutrix and her parents decided to lodge a complaint to the police. On 5.6.1999 the prosecutrix went to the police and lodged a complaint and offences were registered against all the accused.

11. I have reproduced the case of the prosecution exhaustively, because the very nature of the story that creates strong doubt and suspicion about the prosecution case. Even if there is repetition, the aforesaid story can be narrated as below :-

Sr.No.	Date	Nature of incident alleged.
1.	Nov.-Dec.1998	Ravi entered the house of prosecutrix with revolver. Ravi wanted to stay at house of prosecutrix as some people were chasing him, left the house next

		morning. (No rape alleged).
2.	Then one day (No date mentioned)	Ravi came to father of prosecutrix with loaded revolver and was removing and again loading bullets inside the revolver by revolving the same. Ravi expressed his desire to marry Fatima, as his wife was torturing him.
3.	1999 Ramzan-Id	Prosecutrix’s family shifted to Jule Solapur House, Ravi came there after 2-3 days threatened them to vacate or pay Rs.12 lacs. (No revolver).
4.	Last week of April 1999 at 1.30 p.m.	Ravi came to house at Jule Solapur with revolver and started threatening Insisted to pay Rs.8 lacs or insisted to marry him.
5.	Last week of April 1999 at 7.30 p.m.	The entire alleged episode of Ravi & his henchmen entering house, confining parents and Ravi pulling prosecutrix to car and driving on Pune high way & returning to Solapur after about an hour.

6.	Last week of April 1999 at 7.30 p.m.	On returned by scooter alone she went to maternal uncle at Ashiyanagar where her parents were seating. She narrated the incident, they decided to file complaint, but did not.
7.	4th May, 1999	Ravi came to the house with Ibrahim uncle shown revolver and directed prosecutrix, two other family members to seat in car all family members arrived with prosecutrix to Mumbai at 4-5 p.m.
8.	06.05.1999 To 08.05.1999	At Khandala, Dukes Resort demanded intercourse, beats. Accused threatened but no intercourse alleged.
9.	09.05.1999	Prosecutrix and her brother came to Solapur.
10.	09.05.1999	Ravi came at night to the house with revolver in hand and made forcible intercourse. This continued from 95.99 to 16.5.999.

11.	17.5.99	Went to Hyderabad, stayed at hotel Ramda, allegedly raped prosecutrix for 3 days.
12.	After 3 days so about 21.5.99	Came back to Solapur, threatened by showing revolver to prosecutrix father and demanded Rs.20 lacs.
13.	04.06.99 at 4-5 p.m.	Ravi came to the house to fetch prosecutrix with revolver in hand. She was not ready so he slapped her.
14.	05.06.1999	FIR was lodged for the first time.

12. In order to prove its case, the prosecution has examined the prosecutrix and her mother and a Kazi as important witnesses. The father, maternal uncle and, so many other relatives, who were residing at or living in Solapur, those who accompanied the prosecutrix in car with her, those who came to attend the marriage by train, are not at all examined.

13. The prosecutrix and her mother want the Court should believe that right from

November-December 1998 till 4th May 1999, even though the father of the prosecutrix was a professor, even though she herself was taking education in computer engineering, even though the family was educated, financially well-off and, the father was running a hotel, and number of relatives were consistently in touch with the family of the prosecutrix right from November 1998 till June 1999 and even though accused No.1 was consistently threatening at the point of revolver, none of them could gather courage to lodge report against accused No.1 to the police or to make any complaint to the superior police officers. It is easy for the prosecutrix and her mother to say that they were under constant threat and fear. But six months period is not a small period or short period where not even once, none of her family members could gather courage to report the matter to the police or to the higher authority. It is most difficult for any prudent man to believe that such a huge family of father, mother, prosecutrix, her brother and her so many relatives, residing in close vicinity at Solapur, would be under so much pressure as not to gather courage to lodge their protest by filing complaint to the police or to take any

preventive steps in that regard.

14. Even though the story of forced marriage, on the face of it, appears to be bogus and concocted. Because if the prosecutrix and three of her relatives all were brought by accused No.1 in car from Solapur to Bombay, then it is difficult to believe that during that 12 hours journey, none of them could find any time to run away from the alleged threats of accused No.1 and contact and report to the police. It is still more difficult to believe that others, who came by train to Bombay and who were not under the threats of accused No.1, could not gather courage and report the matter to the police and to make any attempt to stop accused No.1 from carrying prosecutrix to Bombay along with other relatives.

15. The marriage ceremony at Bombay, is performed fully in the company of important relatives of the prosecutrix. It is in broad day light where everybody has freedom to move in Bombay and to attend or not to attend the marriage and go to the police. This marriage ceremony is supported by the following documents.

(i) Two forms filled in Urdu for the purpose of Nikah duly signed by the Kazi himself.

(ii) Affidavit of accused No.1.

(iii) Urdu form of Muslim Marriage Register marked at Exh.55.

(iv) English Translation of that information noted in the Register written at Exh.58.

(v) Affidavit at Exh.59 signed by Kazi himself before Shri. Gaytonde, the Notary.

(vi) Exhibit 55 bearing the signature of the father of the prosecutrix as a Vakil at column No.3.

(vii) Shakil Noorani, signed as a witness for accused No.1 in column No.4.

(viii) Altaf i.e. the brother of the prosecutrix signed as her witness in column No.5 in Exhibit 55.

(ix) Admitted acceptance of Rs.25,000/- towards Meher amount.

16. In spite of the aforesaid documents executed by the prosecutrix, her parents, her brother etc., she wants this Court to believe that it was a forced marriage or a marriage under the threats to her life at the point of revolver or gun or pistol whatever that may be.

17. I have given list of dates and events above, apart from narrating the case of the prosecution at length. The dates and events show that the prosecutrix wants the Court to believe that right from November-December 1998 herself and her entire family was under the threats of revolver of accused No.1. In all the events that have followed subsequently there is a wide gap of time sufficient for any one in the family to go to the police or to the higher authorities. But

even then she wants the Court to believe that she could not gather courage, in spite of her family being well educated, to lodge a report to the police. She also wants the Court to believe that her father, who was the professor; doing hotel business; running a restaurant and who had assistance of so many persons working in the hotel and had the facility of telephone in the hotel, could not gather the courage to go to the police at any time from November-December 1998 to May 1999. The prosecutrix wants the Court to believe that even though everything she had narrated in her case, in her evidence, as per the prosecution case was known to her relatives at Solapur, but none of them, in spite of attempt of forcible kidnapping and abduction; forcible marriage, forcible intercourse, could gather courage to go to the police. She also wants the Court to believe that all the documents referred to above, executed by her, by her parents, by her relatives, were obtained by accused No.1 at the point of revolver. She also wants the Court to believe that her story that her parents and other relatives came by train, but even then they could not and did not take any steps to prevent the marriage; to prevent accused No.1 from

proceeding to Bombay, to report the matter to the police or to the Press at any time.

18. Therefore, this is a case where even if the prosecutrix was not cross examined at all, her case was liable to be rejected by the Court outright as a total lie and false implication and full of improbabilities which no court could have accepted or should have accepted. This is apart from the facts that in their cross examination the prosecutrix and her mother are fully exposed and shattered to pieces making entire prosecution story highly improbable, suspicious and ultimately false and full of lies.

19. The evidence of the prosecutrix was recorded in this case firstly on 3.5.2000. She was 25 years of age at that time. After giving her evidence in Chief as per her police complaint, following is the material that is brought on record in her evidence. While taking the prosecutrix to Bombay in the car, accused No.1 showed revolver to uncle Ibrahim and then herself, her uncle Javed and her brother sat in the car and, accused then gave one address of Bombay to her father and asked them to come by

train. Accused took the prosecutrix to Khandala for their honeymoon. There he severely bet her and demanded sexual intercourse with her which she refused. She concealed herself in the toilet. Thereafter they came back to Bombay at the house of Shakil Noorani. Her brother came there and accused No.1 directed him to take her to Solapur and, on 9.5.1999 the prosecutrix and her brother came to Solapur. If what is stated in the evidence is true, then in spite of severe beating given by accused No.1 at a time when the prosecutrix went to celebrate her honeymoon and even though she came to Solapure all alone with her brother, she did not lodge any report to the police.

20. Thereafter, the prosecutrix admitted that on 9.5.1999 after her arrival to her house at Solapur, the accused No.1 came there within two hours. Accused No.1 stayed with her parents and from 9th May to 16th May he had intercourse with her with revolver in one hand. She stated that all the while she was crying during this period and her parents knocking the door from outside requesting accused NO.1 to release the prosecutrix. Even then it is surprising to note

that when the chastity of their girl is being ravished in their own house at the point of revolver, the prosecutrix wants the Court to believe that her parents were quiet in spite of their resistance in the form of knocking the door from outside requesting accused No.1 to release her.

21. Then she stated that on the night of 17th accused No.1 took her forcibly to Hyderabad. They stayed there for three days where accused No.1 raped her. There threats of bringing Rs.20/- lacs from her father were given to her. Then they came back to Solapur. Again also no report, no action, either by the prosecutrix or by her parents or by her relatives or well wishers against accused No.1.

22. She admitted in para 12 of her cross examination that there was a phone at her house and the Phone Number was 600053. The distance between her house and that of her maternal aunt was about 2 to 3 minutes by scooter. She also admitted that her maternal aunt was having a house at Mumbai and in that house her maternal brother Imtiyas was staying where there was a

phone in the house of Imtiyaz. There was phone facility available at the house of Shakil Noorani and also at Hotel Tubba run by the father of the prosecutrix.

23. Therefore, even though there was a phone at the house of prosecutrix, at the hotel of her father, at the house of Shakil Noorani, where the marriage party was stayed, at the house of house of maternal brother Imtiyaz, no attempt whatsoever to inform the police about the so called kidnapping, abduction, forcible marriage at the point of revolver was made. Ibrahimmamu, the near relative of the prosecutrix, was residing at Solapur at a distance of about more than one kilometre. There was telephone at his house. The grand parents of the prosecutrix from her mother side, having phone facility, were residing in Solapur itself. Grand father was running transport business at Solapur and he was known as a highly dignified personality in their community and social worker. But no steps whatsoever was taken by any of these highly influenced persons or the so called relatives of the prosecutrix at any time from November-December 1998 to May 1999.

24. She further admitted that she went to Bangalore along with her father and mother, but that too, according to her, was under distress and against their wishes. My attention was drawn by Mr.Mundergi to certain photographs taken at Bangalore and other places visited, and he rightly argued that in none of the photographs, in one of which the prosecutrix is seen cutting the birthday cake, also the prosecutrix is seen under tension. She is seen enjoying the moments in the photographs.

25. In para 13 of her cross examination she admitted that apart from the aforesaid relatives, there were other relatives of her residing at Solapur. There were suppliers, cooks and waiters in her father's hotel Tubba at the relevant time and, the persons other than her relatives, used to visit her house at Solapur. She has also stated that she had her female friends and her friends used to visit her house occasionally and she also used to visit their house occasionally. At Bangalore they visited the places like Ooti and Mysore and they stayed at hotel and their photographs were taken. Those photographs are at

Exhibits 50 and 51 and those photographs were taken by her father and brother. She also admitted that accused No.1 accompanied her in Vrindavan garden and Mysore and, they wandered in Vrindavan with accused No.1. She admitted that they stayed in the southern Star hotel at Mysore and in Holiday-in at Ooti and that, there accused No.1 had taken photographs. All of them travelled from Ooti to Bangalore along with accused No.1.

26. Thereafter she admitted that her birthday was celebrated at Bangalore where accused No.1 was residing and where he was present. The photographs (Exhibit 52) is about the said celebration.

27. Regarding conduct of accused No.1, the prosecutrix, in para 18, has admitted that the moment her father disclosed to accused No.1 that they were being defamed because of accused No.1, then accused No.1 stopped coming to their house. It was the defence that the kinetic motor cycle which the prosecutrix was having was purchased by accused No.1. When questioned in cross examination she could not tell where the original

cash receipts and the RC book of the said scooter were. She was confronted with the receipt dated 16.8.1997 of Atul Automobiles, Solapur about the said scooter and there was no signature of herself, or her brother or her father, neither the purchase receipt of the moped bear signature of any of the three above.

28. About temporary abduction and kidnapping for certain hours where accused No.1 is alleged to have taken prosecutrix in his car and brought her back after some hours, in para 22, the prosecutrix, admitted that she had not enquired about her parents in hotel Tubba. She travelled on scooter alone in that night. She had gone to the house of her aunt Shahida when her parents, her aunty and her maternal uncle were present.

29. Further she has stated that their journey for marriage from Solapur to Bombay took 12 to 13 hours and it was accused No.1 who was all alone driving the car.

30. Regarding the marriage, it was suggested to the prosecutrix that accused No.1 had purchased jewellery worth Rs.1,42,000/- of her

choice but she admitted that accused No.1 purchased the clothes worth Rs.35,000/- but stated that she does not know from whom they were purchased. Her parents arrived in Bombay at 11.30 p.m. on the next day and accused No.1 told them that arrangement for Kazi could not be made and hence after making the arrangement he would perform the marriage. Kazi that was examined by the prosecution has stated that he firstly verified that accused No.1 has converted to Islam. He had seen affidavit of accused No.1 in that regard. Thereafter he obtained consent of the prosecutrix and accused No.1 for the marriage. But the prosecutrix denied the suggestion that she had given free consent for the marriage in the present of Kazi. She also denied that the marriage (Nikah) was performed as per the rules and regulation of Muslim Law. She also pleaded ignorance whether after the Nikah, Kazi declared that the Nikah was complete and she could lead marital life. But she admitted that she signed the forms in presence of Kazi. She admitted that accused No.1 in the evening of the marriage suggested that they should go to Khandala for honey moon. According to accused No.1 prosecutrix made number of phone calls from

the hotel to her relatives. She was confronted with the xerox copy bearing No.10253 issued by Duke's Retrit and was asked about the telephone calls made by her to different numbers i.e. to her grand mother, uncle, to Imtiyaz.

31. It will be clear from the aforesaid evidence that the prosecutrix has been totally shattered in the cross examination. There is absolutely no doubt that her entire story is full of lies, concocted and bogus.

32. Even the evidence of her mother does not come to her rescue. The prosecution has examined Rashidabegam (PW.8) - the mother of the prosecutrix to support their case and support the evidence of the prosecutrix (PW 2). She has stated about the nature of friendly relations between accused No.1 and her husband Najir Ahmed. She has stated that four tickets were sent by accused No.1 to the family of complainant for coming to Bangalore; that her (PW.8) husband called on accused No.1 on telephone and expressed his surprise. But she admits that invitation to Bangalore was accepted and all the four of them including husband, PW.8 and the prosecutrix went

to Bangalore. They also went to Ooty and Mysore. They returned to Solapur. According to her, they went there because of the complaints made by accused No.1 about his wife and family problems. She has also stated about the request of accused No.1 to hand over the work of construction of their house to Jakkal and payment of Rs.8,30,000/- in presence of accused No.1 to Jakkal. She has stated about the intimacy being developed between accused No.1 and the prosecutrix and about every incident where revolver was allegedly used by accused No.1 to put forth his different demands as stated by the prosecutrix. About the marriage, she has stated that accused No.1 directed the prosecutrix to sit in the car. Then her brother Javed; her son and wife of Javed also went and sat in the car. Before leaving for Bombay accused No.1 had given address and directed her husband to come to Bombay. Therefore, by train P.W.8 and her husband went to Bombay and reached at about 11.30 p.m. on the next day and they went to the address given by accused No.1. At that time accused No.1 told them that arrangement for Kazi could not be made and he was going to peform the marriage in the morning. P.W.8 has also stated

that her daughter i.e. the prosecutrix told her that accused No.1 had purchased some ornaments and clothes against her wishes. On the next morning accused No.1 took the prosecutrix, P.W.8 and her husband outside the house and asked two persons to keep watch on them with threats that they would be finished if they were to peform any overtact till the marriage was performed. At about 2.00 p.m. they returned. The husband told P.W.8 that accused No.1 obtained their signatures without their consent. Then accused No.1 told them that he would be taking prosecutrix to Khandala and also alleged to have threatened them for not to tell anybody about his conversion as Muslim and his marriage with prosecutrix otherwise they would be killed. According to P.W.8 , Altaf remained at Mumbai. Then on 9th in the morning Altaf and prosecutrix came to Solapur.

33. P.W.8 also stated that within two hours accused came back; put his lagguage in their house and then she has stated that accused No.1 was threatening the prosecutrix at the point of revolver and dragged her inside the bed room and he had made forcible intercourse with her. She

further stated that they were crying and requesting accused No.1 to release her daughter but he did not do so and in this manner he continued his activities till 16th.

34. P.W.8 further stated that on 17th accused No.1 told her that he was taking the prosecutrix to Hyderabad and accordingly he took the prosecutrix to Hyderabad for 3/4 days in spite of their opposition. Even after return of accused No.1 and prosecutrix, there were allegations about threatening to the husband of P.W.8 by accused No.1.

35. This witness admitted that her father Abubakar Shaikh was a respectable person at Solapur. She admitted that at the time of aforesaid incident her parents were at Solapur and that her sister Sayyeda and 3 brothers were staying at Solapur and one was staying at Hyderabad. She admitted that her relatives, before and after marriage, were at Solapure and her relations with all the relatives were cordial and she was visiting their houses. She also admitted that her brothers Javed, Ibrahim and her father were having the telephones and her age was

38 and the age of her husband was 54 at that time.

36. Further in the cross examination P.W.8 admitted that plan for construction of the house at Solapur was signed by her, that accused No.1 had taken responsibility of Rs.8,30,000/- paid to Jakkal and total expenditure on the house was Rs.12,00,000/- and that of Rs.3,70,000/- were still to be paid by them to accused No.1.

37. Further in the cross examination this witness admitted that their hotel Tubba was visible from the gallery of their house because it was adjoining to the main road, on the other side and that the hotel was opened in the evening; that there was one male and one female servants. She also admitted that when they went to Bangalore as per the invitation of accused No.1 they stayed at his house and that from Ooty to Bangalore they returned along with accused No.1.

38. She has admitted in para 13 of her deposition that she was treating accused No.1 as her son or like a brother. About remaining

accused Nos. 2 to 4 she has stated that accused Nos. 2 to 5 were arrested; she was called in the police station; they were in the lock up and they were shown to her by police. Then she admitted that when accused No.1 was dragging her daughter, P.W.8 and her husband were crying and shouting and calling the people for their help and then they went to the house of P.W.8's sister on their motor cycle; that they were worried about the daughter but they did not feel to lodge complaint till the prosecutrix returned. She also admitted that it was true that their anexity vanished as soon as prosecutrix returned. [This is with reference to the so called temporary abduction and kidnapping]. There is clear admission that no report was lodged about this incident by them to the police.

39. Regarding the incident of taking the prosecutrix to Bombay along with Javed, Altaf etc. she stated that at that time they had made hue and cry; they had given call to the public to come to their help; but they did not fell it necessary to inform the police and, none of the brothers, sisters or anybody advised them to go to the police. Then after marriage, she has

stated that, she returned from Bombay, at that time neither her brother nor her sister asked anything to her as to what happened in Bombay after they returned to Solapur. Even after return of prosecutrix and Altaf on 9th, they did not feel it necessary to lodge a complaint to the police against the accused nor they had informed about the same to other person. She admitted that between 9th to 17th accused No.1 and prosecutrix were sleeping in the bed room of first floor and P.W.8, and her husband were sleeping in the bed room of the ground floor.

40. She then stated that while accused No.1 was raping prosecutrix in the bed room she was shouting loudly and that she was tried to callthe relatives and neighbrourer but no one come. She admitted that even about this incident no complaint was lodged to the police. It will be clear from the aforesaid evidence that this witness P.W.8 is falling into toe with the prosecturix. Her evidence is equally improbable, doubtful, suspicious, full of falacies and lies and most un-natural conduct expected from a responsible mother. She has no explanation, when accused No.1 was torturing and threatening whole

family and doing of atrocities upon them during a long span of 5/6 months, why not a signle complaint was lodged by them to the police. She was confronted with number of omissions and contradictions with reference to her statement. But apart from that, even her substantial evidence does not inspire any confidence.

41. As against this evidence and submissions by Mr.Mundergi, it was contended by the learned APP and the advocate appearing for the prosecutrix that if a young girl goes to the extent of making allegation about rape against somebody, her evidence was liable to be accepted and at any rate was not liable to be rejected on trifle grounds.

42. This proposition as stated is true. But it is not acceptable in the present case because the grounds for rejection of her case are not trifle. They are about the very credibility of P.W.2 and 8. This is a case where accused are required to be acquitted because of the inherent improbabilities in the case; inherent lacunas

and most unnatural behaviour on the part of P.W.2 and P.W.8. and non-examination of most important witnesses i.e. the husband of P.W.8 and any of the independent witnesses who were involved and were fully knowing about these in this case.

43. I have already observed and noted that as per the evidence of the prosecutrix and her mother (PW 8), everything, the accused is alleged to have done by force at the point of revolver, was known to PW.8 and her husband right from the beginning. The husband was a professor having returned from Libia was running a hotel adjacent to his house. The father of PW.8 was a respectable person and social worker at Solapur. All her relatives, before and after marriage, were staying at Solapur. The prosecutrix herself was educated girl. But none of them approached the police at any point of time for all the period of November-December 1998 to May 1999. The entire case is, therefore, nothing but a concoction and afterthough.

44. The prosecution has examined Kazi as PW 3 to support the evidence of prosecutrix. The only statement which he has made, that could be used

by the prosecution as an evidence to corroborate the testimony of prosecutris, is that "At the time of signing the papers [i.e. the marriage papers] by Fatima, he did not find happiness on the faces of everybody." Otherwise he has stated everything about the manenr in which the Nikah was performed. The documents were got signed by the parties etc. From this solitary statement of this witness about not finding happiness on the faces of everybody, no inference can be drawn that it was a forced marriage. This witness, therefore, is of no help to the prosecution for proving the forciable marriage at the point of revolver.

45. From the aforesaid discussion it will be therefore clear that the entire case of the prosecution ought to have been rejected by the Court as being total false with no grain of truth in the same. In a criminal case admittedly the prosecution has to prove all the charges beyond reasonable doubut. But the evidence adduced by the prosecution of P.W.2 and P.W.8 does not even go to the level creating any suspicion against the accused. The trial Court has, however, not given any importance to all these important

inherent lacunas, draw-backs and defence in the prosecution case. The trial Judge simply appreciated the evidence as like any other criminal case and chose to rely upon the testimony of P.W.2 and P.W.8 in its entirity. The judgment is, therefore, perverse. The judge has even given findings to the extent of observing that witness Kazi never says that the prosecutrix had freely accepted the marriage.

46. For all the aforesaid reasons, both the appeals are required to be allowed and the accused are entitled for acquittal. Hence I pass the following order :-

:ORDER:

1. Both Criminal Appeal No.644 of 2000 and Criminal Appeal No. 658 of 2000 are allowed.

2. Conviction of all the accused under Sections 148, 452 r/w 149; 366 r/w 149; 342 r/w 149; 323 r/w 149 and 506(2) r/w 149 is set aside. They are acquitted of all the charges levelled against them.

3. They are on bail, their bail bond shall stands cancelled.

4. Fine, if any, paid by the accused, be returned to them.

[D.G.DESHPANDE]

10th September 2004. JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 658 OF 2000.

Ravikant Shankarappa Patil]
Resident of 46, Railway Lines,] Appellant.
Solapur.](Org.Accd.No.1)

versus

State of Maharashtra : Respondent.

WITH

CRIMINAL APPEAL NO.644 OF 2000

1. Amar Jayant Salunke]
age 20 years, resident of 42]

New Tirhegaon,Forest,Solapur]

2. Iranna Anappa Dangapur,]
Age 21 years, resident of]
Deotangi, Taluka Aland,]
Dist.Gulbarga Karnataka State] Appellants.

3. Ramesh Arjun Koli, Age 21] (Original
years, resident of Block] Accused
No.12, Vikas Nagar, Solapur] Nos. 2 to 5)

4. Shivkumar @ Shafya Bhima-]
shankar Waghmare, Age 21]
years, resident of Harlayya]
Nagar, Vijapur Road, Solapur]

Mr.A.P.Mundergi with Mr.V.B.Naik for the appellants.

Mr.D.R.More, APP, for the State.

Mr.V.V.Purvant for the original complainant.

CORAM : D.G.DESHPANDE,J.

DATED : 10th September 2004.

OPERATIVE ORDER

1. For the reasons separately recorded, the following order is passed :-

:ORDER:

1. Both Criminal Appeal No.644 of 2000 and Criminal Appeal No. 658 of 2000 are allowed.

2. Conviction of all the accused under

Sections 148, 452 r/w 149; 366 r/w 149; 342 r/w 149; 323 r/w 149 and 506(2) r/w 149 is set aside. They are acquitted of all the charges levelled against them.

3. They are on bail, their bail bond shall stands cancelled.

4. Fine, if any, paid by the accused, be returned to them.

[D.G.DESHPANDE]

10th September 2004. JUDGE.